

From: J.B. Nicholson-Owens
To: Microsoft ATR
Date: 1/27/02 8:54pm
Subject: Microsoft Settlement

Dear Your Honor,

Pursuant to the Tunney Act, I wish to comment on the proposed settlement of the Microsoft case. I feel that this settlement would be contrary to the public interest, and I strongly oppose it. The proposed settlement would cement Microsoft's market dominance (a dominance largely realized through unsavory means) and, more broadly, it would seriously harm competition and innovation in the computer industry. Both of these outcomes are highly undesirable.

The cornerstone of this case involves competition. Historically, rival firms and developers have found it very difficult to compete with Microsoft for two main reasons; Microsoft's proprietary file formats and proprietary Application Programming Interfaces (APIs).

APIs function as an interface that allows different software programs to interact with one another; for example, APIs allow a word processing program to work together with a computer's operating system. The problem here is that Microsoft prevents competition by using secret APIs; Microsoft's applications and operating systems employ undocumented program instructions (that is, program instructions that are not publicly released). Microsoft places valuable functionality in secret APIs and thus prevents competition from leveraging that functionality. For example, while many developers can write a word processor to attempt to compete with Microsoft Word, a non-Microsoft word processor will never offer certain features available only through secret APIs--features only a Microsoft word processor (such as Microsoft Word) is able to provide.

Furthermore, Microsoft's management of its file formats also stifles competition. In addition to being secretive with the details of critical file formats, many Microsoft application file formats change with successive versions of the program; for example, from one version of Microsoft Word to the next. These shifting file formats are primarily designed to prevent competition. By rendering it impractical for potential competitors to develop compatible substitutes which read and write Microsoft file formats--a critical step in making a viable product--competitors are unable to supply a fully compatible alternative to Word or other Microsoft programs. It has been difficult to write a fully compatible Microsoft Word alternative because determining the Microsoft Word file format is both undocumented and changing.

As a result of secret APIs and secret changing file formats, rival products are rarely developed.

Given the critical roles played by APIs and file formats, it is crucial that any proposed settlement do three things:

1. Force Microsoft to disclose all of the file formats and APIs available in all shipped products (including future enhancements). This will end the secrecy around Microsoft's file formats and APIs which will help remedy Microsoft's prior abuse of their monopoly.
2. Force Microsoft to use only disclosed file formats and APIs in products it will ship from now on. This will prevent future abuses by preventing Microsoft from using newly invented secret file formats and secret APIs. Microsoft would remain free to innovate and improve their software by changing their APIs and file formats as needed, but they would be forced to distribute programs built solely on disclosed file formats and APIs.
3. Allow anyone to develop software programs with the disclosed file formats and APIs. This, taken with the previous two actions, will allow viable competition with Microsoft. Just because specifications are documented does not mean other developers are free to develop software based on those specifications, hence the need for this third settlement term.

The settlement in question does not do any of these things; rather, Microsoft is free to continue its past practices. If one clause requires publication of an API or file format, for example, it is accompanied by another clause that prevents a competing developer from actually using that information. The final judgement leaves Microsoft free to continue shipping software that uses secret APIs and secret file formats. Nothing in the final judgement allows for or requires provision of Microsoft APIs and file formats in a way that will encourage markets and competition. Frankly, this situation is no different--and no better--than the one that prevailed before the filing of this Microsoft anti-trust case.

Given this, it is obvious that an alternative policy is required, one that will promote fair competition, and, fortunately, the broad outlines of such a policy are clear. Simply put, Microsoft must be compelled to compete. They must be required to publish all their APIs and file formats (including future enhancements) with the agreement that other firms can write software that complies with these Microsoft specifications. Microsoft must also be required to use only the published file formats and published APIs in shipped products so they cannot continue the anti-competitive practice of developing secret functionality.

Such an approach would have numerous benefits. First, real competition would be a boon to consumers. Consistent with the fundamental principles of markets, this would be likely to provide lower software prices in many cases. Furthermore, competition would also provide a wider product range. Given Microsoft's general dominance, most users are afraid to

use non-Microsoft products because they are justifiably concerned that their existing Microsoft-based files or documents will be incompatible with non-Microsoft programs. Clearly this discourages development by other firms, and it locks users into obtaining and using a single product. By shipping software using only published file formats and APIs, however, competing firms would have an incentive to develop competing products, some of which would undoubtedly provide greater satisfaction and value for many consumers. Finally, competition would spur innovation and development in the software industry. In many cases, frankly, Microsoft products have prevailed because of market dominance rather than quality. Microsoft products contain many undesirable features--vulnerability to viruses, poor privacy protection and so on--which have been allowed to arise and persist because there is little or no pressure to fix them; consumers disillusioned by poor Microsoft products typically have nowhere else to go. Clearly, competition is the remedy for this.

To restate and conclude, the point here is simple: competition. Competition is the cornerstone of the market, and, if allowed to flourish, it usually works well. Microsoft knows this and Microsoft has been working very hard to stifle viable competitive alternatives. You have the power to limit their aggression against competition by refusing the settlement on the grounds that it does not adequately address Microsoft's actions in regard to their handling of file formats and APIs. Please don't let Microsoft continue to prevent consumers from enjoying better computer systems, and please encourage a situation where people can pick products based on their merits rather than on a Microsoft monopoly. Please help contribute to an atmosphere which will foster innovation and development in this vital sector of the economy. Please reject the Microsoft settlement, because it will allow Microsoft to continue making a mockery of consumers, competition, and the computer industry.

Sincerely,
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